

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.12.2020
PRONOUNCED ON : 23.04.2021
CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.Nos.10993, 11015 and 11027 of 2020
and

W.M.P.Nos. 13369, 13395, 13396, 13416, 13365 and 13368 of 2020

1. Dr.Kishore K.John,

2. Dr.S.Kanagavelu

3. Dr.J.Hanna Monisha

4. Dr.V.Uma

5. Dr.J.Jasmine

6. Dr.D.Umadevi

7. Dr.N.Sivakoumar

... Petitioners in
WP 10993 of 2020

Jacqueline Stella

... Petitioner in
WP 11015 of 2020

Dr.V.Kavida

... Petitioner in
WP 11027 of 2020

Vs.

1. Union of India, rep. by its
Secretary to Government (Education) cum
Chairperson,
Pondicherry Society for Higher Education (PONSHE),
Government of Puducherry,
Puducherry.

2. The Pondicherry Society for Higher Education (PONSHE),
rep. by its Member Secretary,
PIPMATE Complex, Puducherry.

3. Directorate of Higher and Technical Education
rep. by its Director,
PIPMATE Complex, Lawset, Puducherry.

4. Indira Gandhi College of Arts and Science,
rep. by its Principal,
Kadirkamam, Puducherry.

... Respondents 1 to 4
in WP 10993, 11015 & WP 11027 of 2020

5. Junior Accounts Officer,
Pondicherry Society for Higher Education (PONSHE),
PIPMATE Complex,
Lawset, Puducherry.

...Respondent 5
in WP 10993 & 11015 & 11027 of 2020

Prayer in W.P.No.11015 of 2020: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the 5th respondent in his proceedings in ID Note No.683/PONSHE/Estt/E1/2019 dated 09.12.2019, quash the same and consequently, direct the 1st and 2nd respondents to convert the petitioners provide fund, from CPF Scheme (Contributory Provident Fund) to GPF Scheme (General Provident Fund) and grant pension in accordance with CCS (Pension) Rules, 1972 in the light of the judgment of this Court in W.P.No.28092 of 2015 and W.P.No.25354 of 2015 dated 05.01.2017.

Prayer in W.P.No.11027 of 2020: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, to direct the 1st and 2nd respondents to convert the petitioners provide fund, from CPF Scheme (Contributory Provident Fund) to GPF Scheme (General Provident Fund) and grant pension in accordance with CCS (Pension) Rules, 1972 in the light of the judgment of this Court in W.P.No.28092 of 2015 and W.P.No.25354 of 2015 dated 05.01.2017.

Prayer in W.P.No.10993 of 2020: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, to call for the records of the 5th respondent in his proceedings in ID Note No.683/PONSHE/Estt/E1/2019 dated 18.11.2019, quash the same and direct the 1st and 2nd respondents to convert the petitioners provide fund, from CPF Scheme (Contributory Provident Fund) to GPF Scheme (General Provident Fund) and grant pension in accordance with CCS (Pension) Rules, 1972 in the light of the judgment of this Court in W.P.No.28092 of 2015 and W.P.No.25354 of 2015 dated 05.01.2017.

For Petitioners : Mr.V.Vijayashankar
For Respondents : Mr.D.Ravinchander, AGP

COMMON ORDER

These matters are taken up through web hearing.

2. These Writ Petitions have been filed by the petitioners, seeking to quash the proceedings of the 5th respondent, rejecting the request made by the petitioners to

convert the petitioners as beneficiaries from Contributory Provident Fund Scheme (in short, 'CPF Scheme') to the General Provident Fund Scheme (in short, 'GPF Scheme') and consequently, grant them pension in accordance with Central Civil Services (Pension) Rules, 1972.

3. Since all these Writ Petitions raise common grounds and issues, they are taken up together for joint disposal vide this common order.

4. The brief facts which gave rise to the filing of the Writ Petitions are stated as under:

The petitioners in these Writ Petitions, were originally appointed to the posts of Lecturer and subsequently, the post has been re-designated as Assistant Professor in the 4th respondent college. The 4th respondent College is one of the constituents of the second respondent, which is a registered society, namely, Pondicherry Society for Higher Education (hereinafter referred to 'PONSHE'). The Society is fully funded by the Government of Puducherry. The Secretary to the Government (Education) is the Chairperson of the 2nd respondent Society and the Director of Higher and Technical Education is the Member Secretary and the Governing Body of the Society comprised only the bureaucrats of the Government of Puducherry. The entire functioning and the control of the Society is with the Government of Puducherry.

5. All these writ petitioners were fully qualified to be appointed as Lecturers and they were appointed in the year 2001 through regular process of selection against substantive vacancies. Their services were continued without any interruption and after successful completion of their probation, their services were also regularized.

6. The Government of Puducherry has several higher educational institutions under its control and some of the institutions were under the aegis of the 2nd respondent society, which as stated above, is fully controlled and administered by the Government of Puducherry through the 3rd respondent Directorate of Higher and Technical Education. According to the petitioners, the following Arts and Science Colleges in the Union Territory of Pondicherry, are functioning under the administrative and financial control of the 3rd respondent.

- i) Tagore Government Arts College, Puducherry
- ii) Barathidasan Government College for Women, Puducherry
- iii) Aringnar Anna Government Arts College, Karaikal
- iv) Avaiyar Government Women's College, Karaikal
- v) Mahatma Gandhi Government Arts College, Mahe
- vi) Dr.SRK Government Arts College, Yanam

- vii) Indira Gandhi College of Arts and Science, Puducherry
- viii) Rajiv Gandhi College of Arts and Science, Puducherry
- ix) Perumthallur Kamarajar College of Arts and Science, Puducherry
- x) Kasturba College for Women, Puducherry

7. The service conditions of all the faculty members in respect of the above institutions, have been one and the same as the conditions being governed by the Regulations of the University Grants Commission (UGC Regulations). The eligibility criteria for appointment, selection method and process, pay fixation and other allied service conditions are made applicable only in terms of the UGC Regulations to the petitioners. According to the petitioners, there has been no shred of difference in terms of the applicability of the Rules and Regulations, service conditions and administration as between Arts and Science Colleges which are directly administered by the 3rd respondent and the colleges which are administered through the 2nd respondent Society.

8. The recruitment of teaching faculty though done by the Government of Puducherry unlike the recruitment of teaching faculty in the colleges which are directly administered by the 3rd respondent through UPSC yet, the recruitment is conducted by following the norms prescribed by UGC Regulations like advertisement in national newspapers inviting applications from all the eligible candidates across the country. It is also a fact that the teaching staff of the colleges which are administered by the society and by the 3rd respondent Directorate have been subjected to transfers quite routinely as there is virtually no difference between the status and the character of the employment of the staff employed as between the colleges run by the Society and the 3rd respondent. This position is further fortified that these petitioners are covered and governed by the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (in short, CCS (CCA) Rules) and in fact, the Governing body of the second respondent in its 3rd meeting held on 25.02.2002, has categorically stated in its Minutes as under:

"UGC norms will be followed in toto and the society will frame separate rules and regulations for other purposes, as is done in other Educational Societies. Till such times these rules are framed CCS Rules can be followed."

9. According to the petitioners, as on date, no separate Rules have been framed by the Society and therefore, the CCS (CCA) Rules alone are made applicable to these writ petitioners and other staff.

10. As far as the Central Government servants are

concerned, their retirement benefits were governed by two schemes originally at the relevant time. One is General Provident Fund (in short, 'GPF') and the other is Contributory Provident Fund (in short, 'CPF'). The former is administered under the General Provident Fund (Central Service) Rules, 1960 and the latter is administered under the Contributory Provident Fund Rules (India), 1962. The government servants had an option to choose between two schemes to suit their individual preferences. As far as the GPF is concerned, it envisages pensionary benefits payable after the retirement of the government servants in terms of CCS (Pension) Rules, 1972. The CPF scheme envisages a lump sum payment on the retirement of government servants but no pensionary benefit was payable.

11. While matters stood thus, after the IV Central Pay Commission recommendation, which was implemented with effect from 1.1.1986, the Government of India made pension scheme mandatory to all the government servants, however, it gave an option to the subscribers of the CPF scheme, to remain with said scheme by exercising a specific option in that regard. Otherwise, all the government servants after the implementation of the recommendation of the IV Central Pay Commission, were deemed to have switched over to the GPF scheme. In this regard, the Government of India has also issued Office Memorandum dated 01.05.1987, wherein, para 3 reads as under:

"3. All CPF beneficiaries, who were in service on 01.01.1986 and who are still in service on the date of issue of these orders will be deemed to have come over to the pension scheme.

3.2 The employees of the category mentioned above will however have an option to continue under CPF scheme, if they so desire. The option will have to be exercised and conveyed to the concerned Head of Office by 30.09.1987 in the form enclosed if the employee wish to continue under the CPF under the CPF scheme. If no option is received by the Head of Office by the above date the employees will be deemed to have come over to the Pension Scheme."

12. From the above, it is quite evident that pension scheme was made mandatory and the CPF was only an option to be specifically exercised by the employee concerned. In 2003, there was a change of policy towards grant of retirement benefits to the Central Government servants and the Government of India introduced National Pension System (NPS) and made it applicable to all the employees who joined Government service of Central/State Autonomous Organizations after 01.01.2004. After introduction of NPS scheme, the CCS Pension Rules 1972 were also made to that extent that the government employees who joined

service on or before 31.12.2003 were eligible for pension and the NPS Scheme is only applicable to the government servants who joined service on or after 01.01.2004.

13. These petitioners admittedly appointed prior to 31.12.2003 and by virtue of the implementation of the recommendation of IV Pay Commission and also Office Memorandum dated 01.05.1987 after 01.01.1986, the GPF was made mandatory and C PF scheme was only an exception for which a specific option to be exercised by the employee concerned. According to these petitioners, at the time when they were appointed, no other scheme was available. While this being the position, the petitioners appeared to have learnt subsequently that they had been treated differently for the purpose of grant of retirement benefits as they had not been covered under the GPF scheme from the date of their appointment, unlike the staff of the colleges directly administered by the 3rd respondent.

14. In the above said circumstances, these petitioners felt that they had been unjustly discriminated against in the matter of extension of benefits of the GPF scheme. As stated above, for all purposes the petitioners were treated as government servants of Puducherry and were covered by the CCS Pension Rules, 1972 and in that circumstances, being aggrieved by denial of the GPF benefit, they represented to the Government to bring them under the GPF scheme which was the only scheme that was in vogue during the time they were recruited. These petitioners were also appeared to have not been given any option to remain with the CPF in the face of the then existing GPF scheme.

15. According to these writ petitioners, they had come across several judgments on the issue of conversion from CPF to GPF and consistently the Courts have held in favour of the employees' contention that during the relevant time, the GPF scheme was the norm and the CPF was an exception and only on the basis of specific option to be exercised by the concerned employee to remain in CPF scheme, the GPF benefits stood excluded. A detailed representation has been made on 06.05.2019 enclosing the relevant ratio laid down by the Courts in their favour. However, the 5th respondent in response to the representation of the petitioners, issued proceedings dated 18.11.2019 rejecting the request of the petitioners for bringing them under the GPF scheme. According to the rejection order, the request of the petitioners cannot be acceded to as it was specifically stipulated in the appointment order that they were governed by the Contributory Pension Rules (India) 1962 as decided by the governing body of the society. Thus being aggrieved by the rejection of the claim, the petitioners are before this Court.

16. Mr.V.Vijay Shankar, learned counsel appearing for the petitioner has at the outset reiterated the above facts. He would then proceed to submit that the reasons set forth in the impugned order for rejection of the petitioners' claim cannot be countenanced both in law and on facts, as there was no CPF scheme in place at all at the time when the these petitioners were appointed in 2001. The only scheme available at that point of time, was the GPF scheme. Therefore, these petitioners ought to have been brought under the GPF scheme automatically by the 2nd respondent society. As regards the stipulation in the appointment letter about the application of the CPF scheme to these petitioners, the learned counsel would submit that when the appointments were given to them, these petitioners had no choice except to accept the same, but that did not mean that their rights could be surrendered abjectly in the face of the mandatory application of the GPF scheme which alone was in vogue at the time when these writ petitioners were appointed.

17. The learned counsel would emphasize the fact that when Office Memorandum was issued on 01.05.1987 pursuant to the implementation of the recommendation of the IVth Pay Commission, it clarified the position without any doubt that continuation with CPF scheme was only on the basis of specific option to be exercised by the employee and all other employees stood automatically switched over to the GPF scheme, which meant that there was no option needed to be exercised for being brought under the GPF scheme. By virtue of the said mandatory stipulation, these petitioners ought to have been brought under the GPF Scheme originally at the time of their appointment. In any case, when they were appointed, there was no option sought from them in regard to their subscription to CPF scheme.

18. The learned counsel would also submit that in regard to the main objection taken in the counter affidavit filed on behalf of the second respondent that these petitioners are the staff of the second respondent Society and they cannot compare them with the staff of other institutions which are directly administered by the 3rd respondent, the distinction sought to be made is completely mis-placed and cannot draw support either from law or from the records. According to the learned counsel, the facts and records would overwhelmingly demonstrate that these petitioners are in fact government servants, as admittedly they were appointed in terms of UGC Regulations and have been governed by the norms of the UGC and also CCS (CCA) Rules as on date as applicable to the Central Government Service. Therefore, the so-called differential treatment meted out to these petitioners by denying the GPF scheme to them, is irrational, unreasonable, arbitrary and violative of Article 14 of the Constitution of India.

19. The learned counsel for the petitioners would further submit that the 2nd respondent Society is governed by the UGC Regulations and CCS (CCA) Rules and all the service conditions which are applicable to the Government servants being adopted and made applicable to these writ petitioners, cannot turn around and deny the applicability of the GPF scheme to these writ petitioners which is blatantly discriminatory and unjust, as it is not open to the society to have implemented the Government norms and the rules as part of their career when they are in service and deny the benefits of the Government scheme in the latter part of their pensioned career, post retirement from service. The learned counsel in regard to the delay in approaching the authority and this Court for the relief as pleaded by the 2nd respondent in the counter affidavit, would submit that the Courts have consistently held even recently that the issue of conversion from CPF to the GPF has been continuously engaging the Courts and he would rely on recent judgments of this Court and also the law laid down by the Hon'ble Supreme Court of India. In addition, the learned counsel would also strongly rely on the latest instructions issued by the Government of India itself vide Office Memorandum dated 17.02.2020, the contents of which are extracted hereunder:

OFFICE MEMORANDUM

Subject: Coverage under Central Civil Services (Pension) Rules, 1972, in place of National Pension System, of those Central Government employees whose selection for appointment was finalized before 01.01.2004 but who joined Government service on or after 01.01.2004.

The undersigned is directed to say that consequent on introduction of National pension System (NPS) vide Ministry of Finance (Department of Economic Affairs) Notification No. 5/7/2003-ECB & PR dated 22.12.2003, all Government servants appointed on or after 01.01.2004 to the posts in the Central Government service (except armed forces) are mandatorily covered under the said scheme. The Central Civil Services (Pension) Rules, 1972 and other connected rules were also amended vide Notification dated 30.12.2003 and, after the said amendment, those rules are not applicable to the Government servants appointed to Government service after 31.12.2003.

2. Representations have been received in this Department from the Government or servants appointed or after 01.01.2004 requesting for the benefit of the pension scheme under Central Civil Services (Pension) Rules, 1972 on the ground that their appointment was delayed on account of administrative reasons or lapses. Similar

references have been received from Ministries/Departments seeking advice of this Department on the question whether the Government servants who were appointed on or after 01.01.2004 could also be extended the benefit of pension scheme under CCS (Pension) Rules, if their appointment was delayed beyond 31.12.2003 on account of administrative reasons and the delay in appointment was beyond the control of the said Government servants.

3. From the representations of the Government employees and the references received from Ministries/Departments, it has been observed that in many of the cases referred to this Department, selection process (including written examination, interview and declaration of result) for recruitment had been completed before 01.01.2004 but the employees joined the Government service on or after 01.01.2004.

4. The matter has been examined in consultation with the Department of Personnel & Training, Department of Expenditure and Department of Legal Affairs in the light of the various representations/references and decisions of the Courts in this regard. It has been decided that in all cases where the results for recruitment were declared before 01.01.2004 against vacancies occurring on or before 31.12.2003, the candidates declared successful for recruitment shall be eligible for coverage under the CCS (Pension) Rules, 1972. Accordingly, such Government servants who were declared successful for recruitment in the results declared on or before 31.12.2003 against vacancies occurring before 01.01.2004 and are covered under the National Pension System on joining service on or after 01.01.2004 may be given a one-time option to be covered under the CCS (Pension) Rules, 1972. This option may be exercised by the concerned Government servants latest by 31.05.2020.

5. Those Government servants who are eligible to exercise option in accordance with para-4 above, but who do not exercise this option by the stipulated date, shall continue to be covered by the National Pension System.

6. to 13."

20. The above Office Memorandum is the answer to the plea of latches raised by the second respondent resisting the claim

of the petitioners. When the Government of India itself thought fit to extend the period of option to be exercised as late as on 31.05.2020, the rejection of the petitioners' claim on the said ground did not stand to reason at all.

21. The learned counsel would proceed to rely on the decisions of the Hon'ble Supreme Court and also this Court as under:

a) "(2006) 12 SCC 53 (Union of India versus S.L.Verma), wherein, this Court's attention was drawn to paragraph 7, which is extracted as under:

"7. The Central Government, in our opinion, proceeded on a basic misconception. By reason of the said Office Memorandum dated 1.5. 1987 a legal fiction was created. Only when an employee consciously opted for to continue with the CPF Scheme, he would not become a member of the Pension Scheme. It is not disputed that the said respondents did not give their options by 30.9.1987. In that view of the matter respondent Nos. 1 to 13 in view of the legal fiction created, became members of the Pension Scheme. Once they became the member of the Pension Scheme, Regulation 16 of the Bureau of Indian Standards (Terms and Condition of Service of Employees Regulation, 1988) had become ipso-facto applicable in their case also. It may be that they had made an option to continue with the CPF Scheme at a later stage but if by reason of the legal fiction created, they became members of the Pension Scheme, the question of their reverting to the CPF would not arise. The respondent No.14 has correctly arrived at a conclusion that an anomaly would be created and in fact the said purported option on the part of respondent No.1 to 13 was illegal when a request was made by respondent No.14 to the Union of India for grant of approval so that all those employees shall come within the purview of the Pension Scheme. In our opinion, the Ministry of Finance proceeded on a wrong premise that the Pension Scheme was not in existence and it was a new one. Two legal fictions, as noticed herein before, were created, one by reason of the memorandum, and another by reason of the acceptance of the recommendations of the Fourth Central Pay Commission with effect from 1.1.1986. In terms of such legal fictions, it will bear repetition to state, the respondent nos.1 to 13 would be deemed to have switched over to the pension scheme, which a fortiori would

mean that they no longer remained in the CPF scheme."

In the above decision, the Hon'ble Supreme Court clearly held that there must be conscious option to continue with the CPF scheme and then only the employee would be excluded from the benefit of the GPF scheme. In this case, admittedly, there was no such option exercised by the petitioners at any point of time even assuming any valid CPF scheme was in place at the time when these petitioners were recruited. Therefore, the reason for rejection mentioned in the impugned order that the petitioners are to be covered only under CPF scheme, is without any valid basis and the same is liable to be interfered with.

b) The learned counsel would also rely on the decisions simultaneously rendered by a Division Bench of this Court, viz., one reported in "(2017) SCC OnLine Mad 4641 (Union of India versus S.Subbiah and others) which was a case filed against the order of the Central Administrative Tribunal, allowing similar claim of the petitioners therein seeking conversion from CPF to the GPF. Upholding the same, the Division Bench had given more elaborate reasons in favour of the claim of the employees therein. The learned counsel would draw the attention of this Court to paragraphs 6 to 16, which are extracted as under:

"6. Dealing with the above issue, the learned Tribunal placed reliance on the decision of the Hon'ble Supreme Court in UOI & another versus S.L.Verma & others" as extracted in para 9 of its order as well as the decision of the High Court of Delhi in W.P.No.(C) No.1490/2006-1507/2006 etc. (Dr.R.N.Virman & others versus University of Delhi and another) as extracted in para 10, has held that an employee who had not opted to continue with CPF Scheme within the original cut-off date, would automatically become member of the Pension scheme by virtue of legal fiction created. The conclusion of the learned Tribunal was on the basis of the ratio laid down by the Hon'ble Supreme Court and the High Court of Delhi, of which, the relevant portion of the Judgment was extensively extracted in para 9 and 10 of the impugned order which read as under:

"9. A similar issue was dealt with by the Apex Court in its decision rendered in UOI & Anr. vs. S.L.Verma & Ors dt.28.11.2006. The Supreme Court held therein that inasmuch as the employees have not chosen to give their option before the cut-off date, a legal fiction is created whereby they have become the members of the Pension Scheme. The operative portion of the judgment is extracted as

hereunder:

"7. The Central Government, in our opinion, proceeded on a basic misconception. By reason of the said Office Memorandum dated 1.5.1987 a legal fiction was created. Only when an employee consciously opted for to continue with the CPF Scheme, he would not become a member of the Pension Scheme. It is not disputed that the said respondents did not give their options by 30.9.1987. In that view of the matter respondent Nos. 1 to 13 in view of the legal fiction created, became members of the Pension Scheme. Once they became the member of the Pension Scheme, Regulation 16 of the Bureau of Indian Standards (Terms and Conditions of Service of Employees Regulations, 1988) had become ipso-facto applicable in their case also. It may be that they had made an option to continue with the CPF Scheme at a later stage but if by reason of the legal fiction created, they became members of the Pension Scheme, the question of their reverting to the CPF would not arise. The respondent No.14 has correctly arrived at a conclusion that an anomaly would be created and in fact the said purported option on the part of respondent No.1 to 13 was illegal when a request was made by respondent No.14 to the Union of India for grant of approval so that all those employees shall come within the purview of the Pension Scheme. In our opinion, the Ministry of Finance proceeded on a wrong premise that the Pension Scheme was not in existence and it was a new one. Two legal fictions, as noticed hereinbefore, were created, one by reason of the memorandum, and another by reason of the acceptance of the recommendations of the Fourth Central Pay Commission with effect from 1.1.1986. In terms of such legal fictions, it will bear repetition to state, the respondent nos.1 to 13 would be deemed to have switched over to the pension scheme, which a fortiori would mean that they no longer remained in the CPF scheme."

7. The above decision squarely applies to the case on hand.

10. Similar order was passed by the Delhi High Court in W.P.(C) No.1490/2006-1507/2006, etc., Dr.R.N.Virman and Ors. vs. University of Delhi and Anr., etc. cases, in order dt.30.04.2014. While passing the order the Delhi High Court has observed as follows:

"14.2. A perusal of the aforesaid form would

show that the only option which had to be exercised was with regard to continuation by an employee under the CPF Scheme. The employee was not required to submit any form if, he or she wanted to be covered under the Pension Scheme, as that was automatic, in view of the deeming provision incorporated in clause 3.1 and 3.2 of O.M. dated 01.05.1987. This is precisely the reasoning given by the Supreme Court in no uncertain terms in S.L. Verma's case. The relevant observations of the Supreme Court are contained in paragraphs 4 and 7, which for the sake of convenience, are extracted hereinbelow.

"4. The Central Government as also the respondent No.14-Bureau of Indian Standards have proceeded on some legal misconception that it was obligatory on the part of the said employees to give a positive option for the said purpose. For the first time on 2.2.1999, the respondent No.14 requested the Union of India for grant of another chance to the respondents to switch over to pension scheme stating that they purported to have exercised their option for CPF Scheme on the cut-off date.

"7. The Central Government, in our opinion, proceeded on a basic misconception. By reason of the said Office Memorandum dated 1.5.1987 a legal fiction was created. Only when an employee consciously opted for to continue with the CPF Scheme, he would not become a member of the Pension Scheme. It is not disputed that the said respondents did not give their options by 30.9.1987. In that view of the matter respondent Nos. 1 to 13 in view of the legal fiction created, became members of the Pension Scheme. Once they became the member of the Pension Scheme, Regulation 16 of the Bureau of Indian Standards (Terms and Conditions of Service of Employees Regulations, 1988) had become ipso-facto applicable in their case also. It may be that they had made an option to continue with the CPF Scheme at a later stage but if by reason of the legal fiction created, they became members of the Pension Scheme, the question of their reverting to the CPF would not arise. The respondent No.14 has correctly arrived at a conclusion that an anomaly would be created and in fact the said purported option on the part of respondent No.1 to 13 was illegal when a request was made by respondent No.14 to the Union of India

for grant of approval so that all those employees shall come within the purview of the Pension Scheme. In our opinion, the Ministry of Finance proceeded on a wrong premise that the Pension Scheme was not in existence and it was a new one. Two legal fictions, as noticed hereinbefore, were created, one by reason of the memorandum, and another by reason of the acceptance of the recommendations of the Fourth Central Pay Commission with effect from 1.1.1986. In terms of such legal fictions, it will bear repetition to state, the respondent nos.1 to 13 would be deemed to have switched over to the pension scheme, which a fortiori would mean that they no longer remained in the CPF scheme..."

"14.5 Clearly, the Pension Scheme as reflected in O.M. dated 01.05.1987 and the facts under consideration, in the present case, are different. There is no requirement for a positive option being exercised for conversion to Pension Scheme. On the cut-off date i.e., 30.09.1987, employees by a deeming legal fiction got covered under the Pension Scheme, unless they chose to exercise a positive option to continue with the CPF Scheme by 30.09.1987.

"16. The argument raised before me by the respondents, which veered towards approbation, was based on the fact that petitioners had continued to contribute under the CPF Scheme. This submission would not cut much ice with me, having regard to the plain terms of O.M. dated 01.05.1987. If, the cover under the Pension Scheme, gets triggered with effect from 30.09.1987, the contribution by an employee and its receipt by the employer clearly proceeds on a misconception of the provisions of O.M. dated 01.05.1987. As a matter of fact, this very argument was repelled by the Supreme Court, in S.L. Verma's case, and I think, for good reason. Consequently, there is no room for entertaining such an argument. The relevant observations made in paragraph 7, specific to this aspect, are, once again, extracted hereinafter.

"...It may be right they had made an option to continue with the CPF Scheme at a later stage but if by reason of the legal fiction created, they became members of the Pension Scheme, the question of their reverting to the CPF would not arise..."

"18. Having regard to the dicta of the Supreme Court in D.S. Nakara's case that grant of pension is a measure of socio-economic justice which,

provides economic security in the evening of one's life, and that, this discernible purpose should inform the interpretive process involved in any such scheme, and therefore, should receive liberal construction, I am inclined to hold that the petitioners would stand covered under the Pension Scheme. In my view, this conclusion accords with the decision of the Supreme Court in S.L. Verma's case and the stand taken by the UGC with regard to the interpretation placed on clause 3.2 of O.M. dated 01.05.1987."

8. As against the above decision of the learned Tribunal, granting the relief, the petitioners are before this Court.

9. The petitioners assailed the order passed by the Tribunal on the ground that once an option had been exercised by the employees concerned albeit during the extended period of time granted for exercising option, the employees cannot go back on their option and that too after several years and claim for pension under the Pension Scheme.

10. Mr.V.P.Sengottuvel learned counsel appearing for the petitioners strenuously contended that vide communications dated 1.5.1987 and 18.9.1987, the employees were given option to remain in CPF Scheme till 30.12.1987, it was followed by another Official Memorandum dated 7.7.2009 stating that such exercise option up till 30.12.1987, cannot be held to be invalid and the employees of the Department Atomic Energy are to be treated separately and cannot be treated as that of the Central Government employees in view of the fact that the original Office Memorandum providing option, had been belatedly circulated to the said Department. By this submission, Mr.Sengottuvel attempted to draw a distinction between the employees of Department of Atomic Energy and other counterparts of the Central Government. According to him, the learned Tribunal overlooked these crucial aspects and followed the decision of the Hon'ble Supreme Court and the Delhi High Court cited supra. In any event, according to the learned counsel, once admittedly the employees having exercised option to remain in CPF Scheme, no relief could be granted to them towards pension as that would defeat the very purpose of the original Official Memorandum issued providing for option.

11. Refuting the contentions of the learned counsel appearing for the petitioners, Shri Balan Haridass learned counsel appearing for the

respondents would contend that the extension of the cut of date from 30.9.1987 to 30.12.1987 had no sanctity in law since the same was not authorized. In support of his contention, Shri Balan Haridass had drawn our attention to the communication dated 24.10.2007 issued by the Ministry of Personnel, P.G., and Pensions, Department of Pension and Pensioners' Welfare, in which, it is mentioned that the power to extend the date has not been delegated by the Department to any other authority. Therefore, according to him, the exercise of option by his clients, namely, the respondent employees cannot be held against them since such exercise is not a valid exercise in the eye of law.

12. Shri Balan Haridass also contended that the learned Tribunal after considering the facts and circumstances, had rightly concluded in favour of the respondent employees and therefore, the impugned order of the Tribunal does not warrant any interference from this Court.

13. In addition to the factual submission, the learned counsel has taken us through the decision of the Delhi High Court in the matter of "Smt. Shashi Kiran and others versus Union of India and others" etc., reported in 2016 SCC OnLine Del4819" wherein, the Delhi High Court has dealt with the issue in extenso and finally held that even if an option exercised by the employees, they would still be entitled to request for change of option to pension scheme in view of subsequent developments and change in socio and economic scenario. In order to appreciate the arguments of Shri Balan Haridass, relevant paragraphs of the decision which would be helpful in deciding the issue involved in the writ petitions, are extracted hereunder:

"22. This court is of the opinion that no infirmity can be found with the approach or reasoning of the learned Single Judge, in allowing the respondents' petitions. The learned Single Judge made a factual analysis, in this category of teaching staff. The chart, prepared for the purpose, and extracted at Para 3.1 of the judgment in this batch (N.C. Bakshi v Union of India WP 5310/2010) shows that all the employees opted for the CPF benefits, after the cut-off date. It was because of this and the expressed stand of the UGC- and the University that the learned Single Judge concluded that notwithstanding the so called option, exercised in terms of the extensions given,

the writ petitioners could not be denied the benefit of the Pension Scheme because they were deemed, by the OM of 01.05.1987 to have opted for it, by default. Having regard to these facts, the appellants could not have urged that the benefit of the Pension Scheme should have been denied to these class of petitioners/teaching staff. Therefore, we are of opinion that there is no infirmity with the impugned judgment of the learned Single Judge. The University's appeals, therefore, deserve to fail.

"23. The last category is the Shashi Kiran batch. Here, the University staff, who constituted the writ petitioners, had consciously opted for the CPF benefits. Their grievance was that of discriminatory exclusion. They had approached the court, contending that when they sought for options, the respondents refused to extend it, saying that the previous extensions had ended and later, that the UGC and the Central Government had refused to grant approval.

"24. This court noticed earlier that relief was granted in the Virmani batch of petitions, by a separate judgment though delivered on the same day. In that judgment, the sequence of events which led to the extensions and how the respondents (i.e UGC and Union of India) were aware of it, was noticed. The said portion of the judgment is relevant and is extracted below:

"(i). that the option for employees for change over from CPF to Pension Scheme was available only upto 30.09.1987;

(ii). the revised options given to employees to return to Pension Scheme were "absolutely incorrect and against the Rules";

(iii). the fact that 30.09.1987 was the cut-off date was conveyed by the UGC to the University of Delhi vide its letter dated 25.05.1999;

(iv). the UGC vide its communication dated 08.08.2001 had requested the GOI through Ministry of Human Resources Development (in short MHRD) to consider extension of the scheme of conversion, which was, however, not agreed to as reflected in GOI's letter dated 27.09.2001. The stand of the GOI as reflected in the said communication was based on its earlier communication dated 19.06.2000 which, adverted to the fact that the matter had been examined by the Ministry of Finance, GOI which had, in turn, advised against grant of another option for change over from CPF to Pension Scheme;

(v) In September 2002, letters were exchanged

between the UGC and MHRD, GOI as also between University of Delhi and UGC.

(v)(a) To be noted, letters exchanged amongst the entities referred to above have been appended with the counter affidavit of UGC.

(v)(a)(i) The letters exchanged between the UGC and MHRD, GOI are dated: 03.09.2002, 24.10.2002, 26.03.2007, 28.03.2007, 11.05.2007, 26.09.2008, 10.09.2008;

(v)(a)(ii). In so far as correspondences exchanged between University of Delhi and UGC are concerned, these are dated: 28.02.2003, 23.09.2003, 21.12.2006.

(v)(a)(iii). Apart from the above, there is a reference to representations by teachers, who were employed with University of Delhi and colleges affiliated to it, prior to 01.01.1986.

(v)(b). The sum and substance of the correspondences referred to above is, that while UGC was sympathetic to extension of the date of conversion till at least 31.03.1998, it did not want to take the burden of pension liability of the employees if, GOI was not agreeable to the extension of date beyond 30.09.1987. (see letter dated 03.09.2002). As a matter of fact, UGC sought instructions in the matter from the GOI, which vide its letter dated 24.10.2002, advised UGC, being the funding agency for Central Universities and deemed Universities, to take a decision at its end without referring the matter to MHRD.

(v)(b)(i). The UGC, therefore, on its part vide its communication dated 23.09.2003, informed University of Delhi that it could not grant, a retrospective, one time change over from CPF Scheme to Pension Scheme.

(v)(b)(ii). What interestingly, though, emerges from the correspondence, is that, since several institutions, such as, IIT Kanpur and other autonomous institutions such as, the Department of Atomic Energy and CSIR had extended the date of switch over qua its employees - UGC's request that the conversion date be extended till 31.12.2003, as a new Pension Scheme had kicked-in vis-à-vis persons joining the University on or after 01.01.2004, was declined by MHRD. (see letter dated 26.03.2007)."

"23. The discrimination complained of by the appellants in Shashi Kiran's batch of cases is that even though the deadline of 30.09.1987 was not deemed sacrosanct by the University (and through omission and, therefore, tacit approval, by UGC and

the Central Government) a large number of employees who had not opted either way were allowed to switch-over to the Pension Scheme through options given over 14 years, by 12 different extensions. Given that the ground realities had undergone a sea change, the CPF scheme was unfeasible and had lost viability; on the other hand, the Pension Scheme was more beneficial. These appellants argue that in such a situation, when 2469 staff members opted for pension on various dates during these extensions, when they wished to do so, the respondents unfairly refused the benefit.

"26. The learned Single Judge's view has some logic in it because the University refused the Pension Scheme benefits in case of those who had chosen it: in Virmani's case, by default (i.e. no option, which meant deemed option) and in the other cases, because of the option for CPF, given after the date prescribed. While the logic for directing relief in the first category (Virmani) is sound, the second category was given relief by ignoring that they consciously wished to switch-over to the CPF scheme, but after the cut-off date. Thus, the learned Single Judge ignored the conscious choice made only on the ground that the choice or option for CPF was after the cut-off date. Now, this has led to a peculiar situation where those who opted for CPF benefits have been divided into two categories: one, who opted before the cut-off date and two, those who opted after the cut-off date. The latter have been given relief. That is also the basis for refusing relief to the former, who are appellants in this batch."

14. From the above, it could be seen that even the employees who have originally opted to remain in CPF Scheme and switched over to Pension Scheme because the same was being more beneficial to them, the Court has held that non-grant of better benefits by way of pension and denying the same to one set of employees per se discriminatory notwithstanding the option exercised by the employees to remain in CPF scheme which was given during the extended period of time, are entitled to seek pension under the Pension Scheme. The Delhi High Court has adverted to several decisions of the Hon'ble Supreme Court and other High Courts and passed a detailed judgment in a batch of appeals.

The issues raised before the Delhi High Court were identical and the Court has answered the issues in favour of the employees.

15. This Court, after hearing the arguments on either side, gave its anxious consideration with reference to the pleadings and the decisions of the Hon'ble Supreme Court and the decision of the Delhi High Court. The natural conclusion emanated from our anxious consideration will only lead to hold that the respondent employees despite their option to remain in CPF Scheme which was given during the extended period of time, are entitled to seek pension under the Pension Scheme. Firstly, the said option given during the time of extended period has no sanctity in law. Secondly, such option given by the employees cannot be held against them in view of the fact that several similarly placed employees of the Central Government were allowed to switch over to the GPF Scheme, meaning that no seriousness attached to the cut of date prescribed originally by the Official Memorandum dated 1.5.1987. If these employees were denied pension in the facts and circumstances, it would certainly amount to discrimination, which per se constitutionally impermissible. Moreover, the decision of the Delhi High Court cited supra and the contentions which were extracted above, would unequivocally supported the claim of the respondent employees notwithstanding the fact that whether they exercised their option or not.

16. In the above circumstances, the order passed by the Tribunal allowing the claim of the respondent employees cannot be faulted with, although the learned Tribunal did not elaborate reasons in support of its conclusion. The conclusion reached by the Tribunal, in our opinion, would not suffer from any infirmity or irregularity warranting interference of this Court."

c) Following the above said decision of the Division, yet another decision was rendered in W.P.No.25354 of 2015 (R.Renukadevi versus The Commissioner, KVS, New Delhi and others), dated 05.01.2017 by the same Division Bench of this Court and the attention of this Court was drawn to paragraphs 8 to 13 which are extracted as under:

"8. As regards the legal position, the issue has been covered by the decisions of the Hon'ble Supreme Court and the High Court of Delhi. In fact, the same Tribunal in similar applications, had allowed the claims of the employees therein, declaring that they were deemed to be pensioners under pension scheme. In fact, this Court has dismissed the batch of writ petitions in WP 28092

to 28094 of 2015 etc., filed by the Union of India, wherein, the Tribunal allowed the similar claims. In fact, in those cases, option had been exercised by the employees in favour of CPF scheme, but in spite of the same, applications were filed and allowed by the Tribunal and the writ petitions filed against those orders by the Union of India, came to be dismissed this Court vide order dated 05.01.2007, with the following observation in para 13 and 14:

"13. From the above, it could be seen that even the employees who have originally opted to remain in CPF Scheme and switched over to Pension Scheme because the same was being more beneficial to them, the Court has held that non-grant of better benefits by way of pension and denying the same to one set of employees per se discriminatory notwithstanding the option exercised by the employees to remain in CPF scheme which was given during the extended period of time, are entitled to seek pension under the Pension Scheme. The Delhi High Court has adverted to several decisions of the Hon'ble Supreme Court and other High Courts and passed a detailed judgment in a batch of appeals. The issues raised before the Delhi High Court were identical and the Court has answered the issues in favour of the employees.

14. This Court, after hearing the arguments on either side, gave its anxious consideration with reference to the pleadings and the decisions of the Hon'ble Supreme Court and the decision of the Delhi High Court. The natural conclusion emanated from our anxious consideration will only lead to hold that the respondent employees despite their option to remain in CPF Scheme which was given during the extended period of time, are entitled to seek pension under the Pension Scheme. Firstly, the said option given during the time of extended period has no sanctity in law. Secondly, such option given by the employees cannot be held against them in view of the fact that several similarly placed employees of the Central Government were allowed to switch over to the CPF Scheme, meaning that no seriousness attached to the cut of date prescribed originally by the Official Memorandum dated 1.5.1987. If these employees were denied pension in the facts and circumstances, it would certainly amount to

discrimination, which per se constitutionally impermissible. Moreover, the decision of the Delhi High Court cited supra and the contentions which were extracted above, would unequivocally supported the claim of the respondent employees notwithstanding the fact that whether they exercised their option or not.

9. Further, the Delhi High Court in "Smt. Shashi Kiran and others versus Union of India and others" etc., reported in 2016 SCC OnLine Del4819" has dealt with the issue in extenso and finally held that even if an option exercised by the employees, they would still be entitled to request for change of option to pension scheme in view of subsequent developments and change in socio and economic scenario.

10. Even going to the extent of holding that she had exercised her option in favour of Central Provident Fund Scheme, such exercise of option was not valid and subsisting in view of subsequent social and economic development. It is also to be seen from the decision of the Delhi High Court that several employees have been allowed to switch over from CPF to pension scheme even after the exercise of option originally in favour of the CPF scheme. Such being the case, singling out a few employees in some departments on an erroneous understanding of the office memorandum dated 01.09.1988, would be per se discriminatory and hence consequentially impermissible.

11. In the above circumstances, the learned Tribunal has not appreciated the claim of the petitioner in proper perspective with reference to the above said office memorandum and decisions cited on behalf of the petitioner. The learned Tribunal was misguided by the fact that the petitioner continued to remain under CPF scheme without due appreciation of the fact that all employees, on introduction of the pension scheme in 1988, deemed to have come under pension scheme. Merely because the petitioner continued to contribute to the CPF scheme, her right to get pensionary benefits under the pension scheme cannot stand negatived, as the right which falls for consideration before us is the constitutional right to equal treatment, as envisaged under Article 14 of the Constitution of India.

12. In these circumstances, we are unable to accept the decision of the learned Tribunal which is impugned in the writ petition, as the Tribunal erred in dismissing the application. In the circumstances, this Court has no other option except to set aside the order passed by the learned Tribunal.

13. Accordingly, the order passed by the Tribunal in O.A.No.1166 of 2013, dated 2.6.2015 is set aside and the prayer sought for by the petitioner therein, is granted. The Official respondents are directed to convert the petitioner as pensioner under GPF Scheme forthwith, calculate and pay the revised pension including the arrears for which, he became eligible by such conversion. At the same time, the petitioner is also directed to refund the amount received by him towards CPF Scheme with 9% p.a. interest from the date when he received till the date of payment. It is also made clear that arrears of pension payable to the petitioner under GPF Scheme may be adjusted towards refund of the P.F. amounts received by the petitioner with interest. In the event of not realizing the entire amount, the remaining portion amount may be refunded by the petitioner."

22. The learned counsel would submit that the claim of these writ petitioners herein stand on a better footing than the issues that were decided by the Division Bench in the above cases. In those cases, despite the option being exercised to remain under CPF scheme by some employees, yet the option found to be lacking legal sanctity and the employees therein were allowed to switch over to the GPF scheme

23. The learned counsel would sum up that the plea of latches cannot be successfully pleaded in view of the latest Office Memorandum of the Government of India itself, dated 17.02.2020. The difference drawn between the staff of the society and the 3rd respondent is not supported by any valid material. On the contrary, the petitioners have well established that they have been governed by the UGC Regulations and CCS (CCA) Rules as applicable to the Government employees and the mandatory nature of GPF which was in existence at the time when these writ petitioners are recruited and in the face of such mandatory stipulation, any contra stipulation in the appointment letter, would have no sanctity in law. Therefore, the learned counsel would implore this Court to allow the Writ Petitions as prayed for.

24. Per contra, the learned standing counsel for the 2nd respondent society would submit that these writ petitioners cannot seek parity in treatment as that of the staff employed by the Government directly, as these petitioners are admittedly servants of the 2nd respondent society and they have been governed by different set of standards. The learned counsel would also, in fact, draw the attention of this Court to para 8 of the counter affidavit which seeks to drive distinction between the Government Educational Institutions and the institutions run by the 2nd respondent society which is extracted as under:

Sl.no	Government Educational Institution	Educational Institution run by a Society
1	Recruitment for teaching posts is conducted by the Union Public Service Commission on All India basis.	Recruitment is by the recruitment Board of the society on local basis.
2.	State Government	Registered as a Society under the Societies Registration Act, 1860.
3.	Central Civil Services rules viz., Central Civil Services (Classification, control and Appeal) Rules, 1965, CCS (Pension) Rules, 1972 are applicable.	Rules and regulations, Bye-Laws of the society concerned.
4.	Decisions are taken by the Government	Decisions are taken by the Governing body
5.	GPF Scheme till 31.12.2003 and New Pension Scheme from 01.01.2004	Contributory Provident Fund Scheme.

25. The learned counsel would submit that the above method of recruitment would bring out the difference between two categories of staff which do not require any further elaboration. The learned counsel would point out that the decisions of the learned Division Bench relied on by the petitioners, cannot be made applicable to the cases on hand for the simple reason that in those cases, the status of the petitioners therein was never questioned as they were admittedly in Central Government service, but in this case, the status of these petitioners itself is under challenge and therefore, the petitioners cannot validly seek application of the decisions laid down in the above said decisions. Whatever be the nature of the grievance of these petitioners, ultimately it cannot be

denied that they are the employees of the 2nd respondent society and cannot call themselves as Government servants.

26. The learned counsel would also stress a point that the claim of the petitioners is presently barred by inordinate delay and laches. Admittedly, the petitioners were appointed in the colleges run by the 2nd respondent society during 2001-2003 and they were all along covered under the Contributory Provident Fund Rules (India), 1962 but had chosen to represent only in the year 2019. Therefore, the claim is belated may not be entertained at all by this Court. He would hence request this Court to dismiss all the writ petitions as being devoid of merits.

27. This Court considered the submissions of Mr.V.Vijay Shankar, learned counsel for the petitioners and of Mr. D.Ravichandran, learned counsel for the 2nd respondent and perused the materials and pleadings placed on record.

28. The controversy as to whether these petitioners are entitled to be brought under the GPF scheme with reference to the date of their appointment is to be examined with reference to four strong objections put forth on behalf of the respondents. Of all the objections resisting the claim of the petitioners herein, the main objection as to the status of the petitioners herein needs to be examined and appreciated first, before this Court embarks upon dealing with other objections.

29. As to the applicability of the GPF scheme to these writ petitioners, though it was not specifically stated in the impugned order, however, the principal contention raised in the counter affidavit is that these writ petitioners have been governed by the Rules of the Society and its Bye Laws and when they were recruited, a different recruitment process and method was adopted. According to the objections of the respondents, unlike the Government servants being recruited by the Centralized Recruitment Agency, i.e. UPSC, these petitioners were only recruited by the Government of Puducherry locally and therefore, there is material difference in the matter of recruitment of the petitioners which would dis-entitle them to claim parity with the Government servants.

30. The above objection on a precipitous appreciation may appear to be having some substance or force, however, such objection pleaded on behalf of the respondents need to be critically and incisively examined in order to understand the substratum and the foundation of the claim of the petitioners. In the counter affidavits and also during the course of oral submissions, it is not disputed that these writ petitioners have been governed by the Regulations and norms prescribed by UGC and

their service conditions are being governed by CCS (CCA) Rules even as on date. In fact, it was specifically pleaded on behalf of the petitioners that as on date, no rules have been framed by the 2nd respondent Society and the petitioners continued to be governed by the CCS (CCA) Rules. It is also not disputed by the respondents that the criteria for recruitment, the fulfillment of qualification and other requirements were in conformity in terms of the UGC Regulations. Further, the pay fixation and other allied benefits were also in terms of the government norms.

31. From the petitioners' side, it was categorically stated in the affidavits filed in support of the writ petitions that the 2nd respondent Society is fully funded and controlled by the Government of Puducherry and the Colleges run by the Society are governed and administered through the 3rd respondent. This factual assertion of the petitioners has not been refuted by the respondents even as a perfunctory and routine response by means of rebuttal. In the absence of any semblance of denial by the respondents, what could be gathered or inferred by this Court is that there is nothing material available for the respondents to oppose the claim of the petitioners on legitimate grounds. The mere pleading and arguing that these petitioners have been employed by the society and therefore, not entitled to the benefit of the GPF scheme applicable to the government servants without any material or formidable supportive factors emerging from the respondents' side, is to be discarded and discountenanced not meriting serious consideration. The stand of the respondents that being the servants of the 2nd respondent society, these petitioners could not claim the benefit envisaged for the Government servants, in the opinion of this Court, appears to be a mere smoke screen to colour the status of the petitioners in its form, but in substance, the society is nothing but an another arm of the State, the society being established presumably for functional autonomy and Administrative convenience. But the fact of the matter is that the 2nd respondent though called as society, but fully controlled and administered by the Government. When the society is indisputably controlled by the Government of Puducherry fully, it cannot call itself an independent entity merely because it is registered under the Societies Registration Act for the purpose of treating its servants differently. In the absence of any semblance of dispute from the respondents' side of factual matters touching upon the pervasive control of the Government in running the affairs of the society and also the applicability of UGC Regulations and norms and CCS (CCA) Rules to the staff of the society, this Court has to come to an inexorable conclusion that these petitioners are to be treated as Government servants for conferment of all benefits that are being made applicable and extended to the staff of the Government of Puducherry and

Central Government. In the said circumstances, this Court has no hesitation to overrule the objections of the respondents on this aspect.

32. As regards to the objections to the aspect of delay and latches, it is well demonstrated on behalf of the petitioners that even recently, vide Office Memorandum, dated 07.02.2020, the Government thought fit to extend the benefit of the GPF scheme to CPF opted employees and time was given upto 31.05.2020 to the employees who had been recruited earlier to 01.01.2004 for conversion. The intention of the Government was therefore, to maximize the number of beneficiaries of the GPF scheme. In the face of the above Office Memorandum, the objection relating to latches and delay in this case by the respondents, is misplaced and has to be rejected as devoid of merits.

33. Even otherwise, the learned counsel for the petitioners relied on two decisions of Division Benches of this Court which were also rendered after lapse of very many years when the pensionary claim became due and payable. In matters of grant of pensionary benefits under the GPF, delay is immaterial, particularly, when the right of the petitioners to receive pension stood well established.

34. As regards the claim on hand is concerned, the Courts have consistently held that during the relevant time, particularly, after 01.01.1986, the GPF scheme was made mandatory till it was replaced by NPS Scheme which was brought into force with effect from 01.01.2004. These writ petitioners were admittedly appointed prior to 01.01.2004 and in view of the mandatory prescription as revealed through Office Memorandum dated 01.05.1987, these petitioners were deemed to have been admitted or switched over to the GPF scheme even assuming was there any CPF scheme available in the 2nd respondent society at that time when the petitioners were recruited.

35. Moreover, it is also not disputed by the respondents that any option was called for from these petitioners to remain with CPF or switch over and in the absence of any option calling for retention of the petitioners in the CPF scheme, the retention of the petitioners with CPF scheme was contrary to the mandatory prescription on implementation of the IV Pay Commission from 01.01.1986 that the GPF scheme shall be made applicable to all servants as a rule. In the said circumstances, the petitioners having established their right unequivocally for the applicability of the GPF scheme, the latches or the delay pleaded on behalf of the respondents would have to necessarily pale into legal insignificance.

36. The third objection of the respondents is that the

recruitment method adopted being different in the appointment of these petitioners and hence they are not entitled to seek parity in the matter of admissibility of the GPF, this Court is unable to appreciate such submission for the reason that the difference in the method of recruitment is immaterial in the face of the fact that the eligibility criteria and the qualifications for recruitment of these petitioners were admittedly in terms of the UGC Regulations and norms. Ultimately, what is to be seen is whether the petitioners being the staff of the society, satisfied the stipulations and norms as applicable to the government servants and that alone is material for eventual conclusion of this Court declaring them to be placed on par with the status of the government servants. In this case, admittedly, the UGC norms and stipulations had been applied and these petitioners have been governed by CCS (CCA) Rules and in such circumstances, the distinction which sought to be made by the respondents on the said plea is irrational, unreasonable and arbitrary and therefore, the same cannot be countenanced at all. In such view of the matter, the contention on behalf of the respondents regarding different method of recruitment, in the opinion of this Court, is a specious piece of submission which has to be rejected outright.

37. The last objection is that while these petitioners were appointed, in their appointment letters, it was clearly stipulated that they would be covered by CPF scheme and therefore, the petitioners are estopped from protesting against the said claim made applicable to them. This objection of the respondents cannot be held to be valid for the reason that the right of these petitioners to be brought under the GPF scheme, in the facts and circumstances, cannot be forced to be parted with because there was a stipulation in their appointment letters, detrimental to their interest. Such stipulation, in the opinion of this Court, cannot stand the test of judicial scrutiny when these petitioners at the time of their appointment, had no inkling as to the mandatory nature of the GPF scheme which was brought into force after IVth Central Pay Commission from 01.01.1986. In any event, there cannot be any estoppel against exercise or enforcement of constitutional and fundamental right. In such view of the matter, the said objection would have to be rejected as being without merit.

38. This Court also finds that when the petitioners were sought to be admitted to CPF scheme at the time of their recruitment/appointment in terms of the Contributory Provident Fund Rules (India), 1962 which is again Government of India Rules applicable to the same Government servants who opted for the GPF benefits, it cannot be gain said that the 2nd respondent being a society can legitimately claim insulation from applicability of Government scheme, namely, the GPF. When CPF

scheme of the Central Government is made applicable, the claim of the petitioners herein gets narrowed down only to see whether the CPF or the GPF is applicable to these petitioners. In that view of the matter, there cannot be any other conclusion by this Court except to hold that as between the two Government of India schemes, the GPF scheme alone is applicable to these petitioners. The objection that the society being the employer of these petitioners as a consequence of which, their status would suffer diminution would have no legal sanctity or relevance for the ultimate consideration of the petitioners' claim.

39. In the conspectus of the above judicial discourse, this Court is of the considered view that in all fours these petitioners have made out a clear case for grant of the relief.

40. In the said circumstances, this Court finds that the impugned order passed by 5th respondents is liable to be set aside as being illegal, unreasonable, discriminatory and violative of Article 14 of the Constitution of India and also it is violative of the law laid down by the Hon'ble Supreme Court and this Court.

41. In the result, the Writ Petitions are allowed the impugned proceedings of the 5th respondent in ID Note No.683/PONSHE/Estt/E1/2019 dated 18.11.2019 are hereby set aside. The respondents 1 and 2 are directed to bring the petitioners under the then GPF Scheme for the purpose of grant of pension to these petitioners in accordance with CCS (Pension) Rules, 1972. The competent authority/respondents are directed to pass appropriate orders in this regard within a period of 8 weeks from the date of receipt of a copy of this order. No costs. Consequently, connected WMPs are closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

Suk

TO

1. The Secretary to Government (Education)
cum Chairperson,
Pondicherry Society for Higher Education (PONSHE),
Government of Puducherry,
Puducherry.

2.The Member Secretary,
The Pondicherry Society for Higher Education (PONSHE),
PIPMATE Complex, Puducherry.

3.The Director,
Directorate of Higher and Technical Education
PIPMATE Complex,
Lawset, Puducherry.

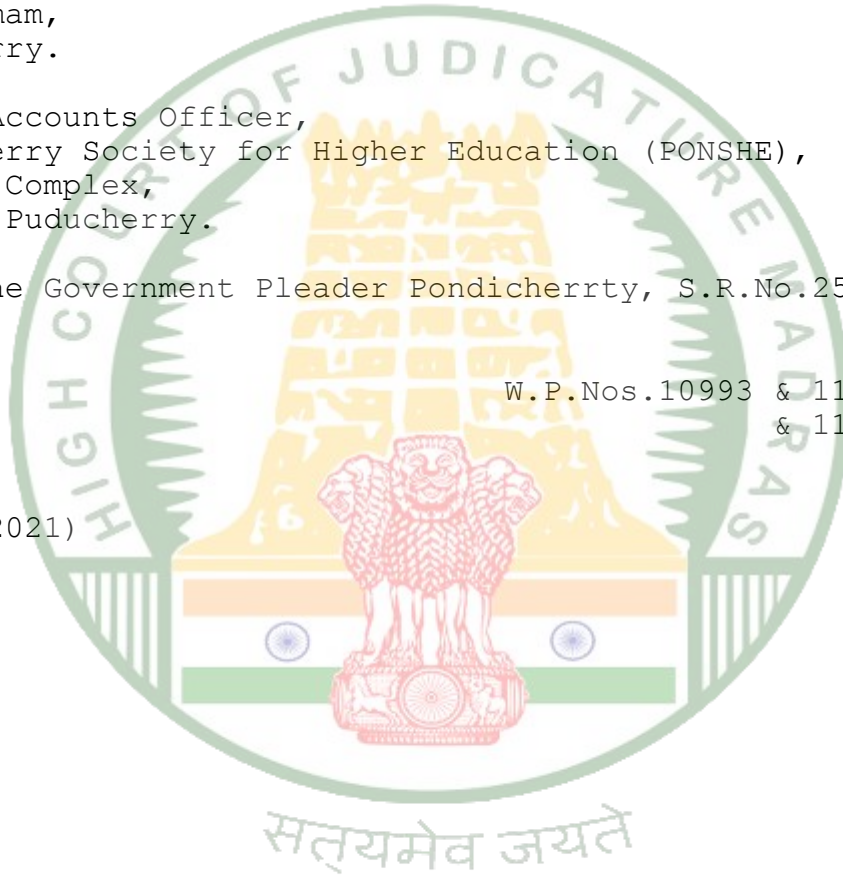
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5.Junior Accounts Officer,
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+1cc to the Government Pleader Pondicherry, S.R.No.25120, 25119

W.P.Nos.10993 & 11015 of 2020
& 11027 of 2020

KJ(CO)
GN(28/06/2021)



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